

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated : This the 16th day of June, 1998

BEFORE

THE HON'BLE MR.JUSTICE KUMAR RAJARATNAM

WRIT PETITION NO. 520 OF 1993

BETWEEN :

1. Ademane Gopalaiah s/o
late Mariyappa, aged about
65 years, agriculturist,
r/o Mutuguppe village,
Sorab Taluk, Shimoga Dist.
2. S.V.Naranappa s/o late
Venkappa, age major,
agriculturist, r/o Eli
village, Sagar Taluk,
Shimoga Dist.
3. A.R.Ganapathi s/o late
Ram Bhat, age major,
agriculturist, r/o Sasara-
valli village, Sagar Taluk,
Shimoga Dist.
4. H.S.Chandrashekarappa s/o
late Shankarappa Swamy Gowda,
age major, agriculturist,
r/o K.Hunasavalli village,
Hosanagar Taluk, Shimoga
Dist.

PETITIONERS

(By Sri S.R.Hegde Hudlamane,
Advocate)

AND

1. State of Karnataka Rep. by
Director of Co-operative
Audit, Shankaramath Road,
Basavanagudi, Bangalore.
 2. M.M. Annegeri, Deputy
Director of Co-operative
Audit, at present 441
Auditor of Malaprabha Co-
operative Sugar Factory Ltd.,
M.K. Hubli, Belgaum Dist.
 3. The Arecanut Processing and
Sale Co-operative Society
Ltd., Sagar, represented by
its Secretary.
 4. Joint Registrar of Co-opera-
tive Society, Pampa Mahakavi
Road, Chamarajpet, Bangalore. RESPONDENTS
- (By Sri B. Veerappa, HCGP for
R-1 and R-4; Sri G. Krishna
Murthy, Advocate for R-3;
R-2 - served)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the audit report vide Annexure-E issued by the 2nd respondent dated 13.8.1992, to declare that the entire proceedings pursuant to the Annexure-E are illegal, null and void and also to direct the respondents not to take any action pursuant to the alleged impugned audit report vide Annexure-E.

The petition coming on for hearing this day, this Court made the following :-

ORDER

O R D E R

The 1st petitioner was the President of the 3rd respondent-society during the year 1989-90. The other petitioners are directors. As per the direction of the 3rd respondent-society the Government of Karnataka appointed a senior auditor to audit the accounts of the society. The auditor audited the accounts for the period of 1989-90 in accordance with the directions of the Government. The Audit Report was issued under Section 63(5) of the Karnataka Co-operative Societies Act (hereinafter referred to as the Act) to the 3rd respondent-society. The Audit Report for the sake of convenience may be referred to as the First Audit Report. According to the First Audit Report there were *noted* certain acts of alleged misconduct and misappropriation by the petitioners. Notwithstanding the First Audit Report, the Government passed an order dated 16.5.1991 at Annexure-D. By the order at Annexure-D the Government forfeited the first audit and directed a second audit

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to be conducted. The second audit report also found the petitioners guilty of the alleged misappropriation. The Second Audit Report at Annexure-D dated 16.5.1991 also fixed the liability of each of the petitioners individually. This audit report is now challenged in this writ petition.

2. The main contention of the learned counsel for the petitioners is that the First Audit Report which was approved by the general body and which is more or less in the same ^{tenor} ~~tenure~~ of the Second Audit Report is binding on the respondents and there was no need to have a second audit on the same subject. There is also no provision in law to direct a second audit when the first audit report itself inducts the petitioners. Aggrieved by the second audit report at Annexure-D the petitioners have filed this petition seeking to quash the second audit report.

3. It is common ground that the subsequent audits for the subsequent years by the Director

of Co-operation and Audit has ~~been~~ taken note only of the first audit report and the audit reports are prepared on the basis of the first audit report with respect to the subsequent years. This has been going on since 1991. It was also submitted that the second audit report at the instance of the Government was never placed before the general body. The general body of the 3rd respondent-society was also of the opinion that the first audit report which ^{indicated} ~~inducted~~ the petitioners would be the correct basis for proceeding against the petitioners in accordance with law.

4. Apart from this, the Registrar has also initiated proceedings against the petitioners under Section 64 of the Act on the basis of an independent enquiry relying on both the audit reports.

5. The learned counsel for the 3rd respondent-society submits that the ends of justice will be met if reliance can be placed on any one of the audit ^{reports} ~~either~~ the first audit

or the second audit. However, it was submitted that it would be better and legally sound to place reliance on the first audit report. This is more so, because the audit reports of the succeeding years have been based on the first audit report and the second audit report has been stayed by this Court during the pendency of this writ petition. Since the subsequent audits have been conducted on the basis of the first audit report which also indicts the petitioners it would not be necessary to place any reliance on the second audit report as two audit reports parallel to each other would only complicate the future audit of the society.

6. The learned counsel for the petitioners also submits that he is prepared to face the music on the basis of the first audit report and it is also submitted by the learned counsel for the society that proceedings are also initiated under Sections 64 and 68 of the Karnataka Co-operative Societies Act. In that view of the matter, the second audit report dated 16.5.1991 is liable to be quashed.

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7. In the result, the first audit report dated 7.11.1990 at Annexure-A stands revived. Consequently the second audit report dated 16.5.1991 at Annexure-D stands quashed.

The matter may be proceeded in accordance with law as per the first audit report dated 7.11.1990 without any reference to the second audit report at Annexure-D.

This order will not in any way affect the action taken by the 3rd respondent-society and Authorities under Sections 64 and 68 of the Karnataka Co-operative Societies Act.

With these observations the writ petition is disposed of. No order as to costs.



Sd/-
JUDGE